

pursuant to the terms of the cost sharing agreement.

(8) A person who furnishes or has furnished through sale, lease arrangements, or otherwise any of the radio equipment used to operate a cooperatively shared radio station may not provide dispatch service to the licensee of the radio station or to any person cooperatively sharing operation of the licensee's radio station.

(b) Participants in the shared arrangements may obtain a license for their own mobile units (including control points and/or control stations for control of the shared facility). If mobile stations are licensed to participants, the licensee of the shared facilities must maintain a means of isolating and deactivating, or disconnecting from the system any such mobile station, control station or control or dispatch point, or should that not be feasible, deactivating the base station transmitter(s) or repeater(s).

(c) When costs are shared, the licensee must keep records of the following:

(1) Identity of each participant.
(2) Date each participant commenced use.

(3) Date each participant terminated use.

(4) All capital and operating costs incurred for the system.

(5) All charges to each participant and all payments received from each participant, separately stated.

(6) The method of calculation of costs to participants.

Such records must be kept current and must be made available upon request for inspection by the Commission.

(d) When costs are shared, costs must be distributed at least once a year. A report of the cost distribution must be prepared by the licensee, placed in the station records, retained for three years, and be made available to participants in the sharing and the Commission upon request.

§ 90.181 [Reserved]

5. Section 90.181 is removed and reserved.

§ 90.183 [Reserved]

6. Section 90.183 is removed and reserved.

7. Section 90.185 is revised to read:

§ 90.185 Multiple licensing of radio transmitting equipment in the mobile radio service.

Two or more persons eligible for licensing under this rule part may use the same transmitting equipment under the following terms and conditions:

(a) Each licensee complies with the general operating requirements set out in § 90.403 of the rules.

(b) Each licensee is eligible for the frequency(ies) on which the licensee operates.

(c) Each licensee must have unlimited and unconditional access to the transmitter for which the licensee is authorized.

(d) No consideration shall be paid, either directly or indirectly, by any participant to any other participant for, or in connection with, the use of the jointly licensed facilities.

(e) No participant shall furnish to any other participant with or without charge, any equipment or service, or facility of any kind, for use in connection with the facility.

(f) A person who furnishes or has furnished through sale, lease arrangements, or otherwise any of the radio equipment used to operate a multiple licensed system may not provide dispatch service to the licensee of any radio station authorized to operate the multiple licensed system.

§ 90.391 [Amended]

8. Section 90.391 is amended by removing paragraph (b), redesignating paragraphs (c) through (h) as (b) through (g), and revising the new paragraph (d) to read as follows:

* * * * *

(d) Licensees furnishing service to eligible persons on a not-for-profit, cost-shared basis shall comply with the provisions of § 90.179 of the rules, and shall, within 30 days of the close of the first full calendar year of operation, and each year thereafter, submit a report setting forth the current total number of mobile units operated by each user and a statement showing whether these units are of the vehicular or portable type.

9. Section 90.421 is amended by revising paragraph (j) to read as follows:

§ 90.421 Operation of mobile units in vehicles not under the control of the licensee.

* * * * *

(j) Mobile units licensed to an eligible in the Railroad Radio Service may be installed in vehicles operated by organizations providing, under contract, facilities or service in connection with railroad operation or maintenance including pickup, delivery, or transfer between stations of property shipped, continued in, or destined for shipment by railroad common carrier. Parties to

the contract must comply with the provisions of § 90.179.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Spiranthes parksii* (Navasota ladies'-tresses) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Spiranthes parksii* (Navasota ladies'-tresses), to be an Endangered Species under the authority contained in the Endangered Species Act. This plant occurs in Texas and is primarily threatened due to extremely low numbers, urbanization, and possible over-utilization. This determination of *Spiranthes parksii* to be an Endangered Species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on June 7, 1982.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 703/235-1975.

SUPPLEMENTARY INFORMATION: *Spiranthes parksii* (Navasota ladies'-tresses) is endemic to Brazos County, Texas. It was first collected by Dr. H. B. Parks along the Navasota River in Brazos County, Texas, in 1945. Correll described the species in 1947 based upon the Parks collection. Subsequent efforts to relocate the species in the late forties and fifties were unsuccessful and it was thought to have become extinct. However, in 1978, P. M. Catling rediscovered the species in Brazos County near College Station. Recent searches have resulted in relocation of a second population near the type locality. In 1978, a total of 20 plants were observed at these two stations. In 1979, nine plants were observed at these two stations.

Spiranthes parksii is a small herbaceous perennial orchid which measures approximately 30 cm tall. Most of the leaves are basal and grass-like. The flowering stalk is slender bearing small white flowers with a green mid-vein. *Spiranthes parksii* is one of the rarest and least known orchids of North America.

Spiranthes parksii is endemic to Brazos County, Texas. One population occurs near College Station, where urbanization is increasing and no protection status for the orchid exists. The second population occurs in a rural area on a ranch where the primary use of the land is hunting. No protection status exists at this site either. The extremely small total population size makes *Spiranthes parksii* highly vulnerable to extinction. Due to its rarity and the widespread interest in orchid cultivation, this species may also be sought by collectors.

This rule determines *Spiranthes parksii* to be Endangered and implements the protection provided by the Endangered Species Act, as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the Federal Register (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within.

On June 18, 1976, the Service published a proposed rulemaking in the Federal Register (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered Species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975 Federal Register publication. *Spiranthes parksii* was included in the July 1, 1975, notice of review and the June 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, Federal Register publication which also determined 13 plant species

to be Endangered or Threatened (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 18, 1976 proposal along with four other proposals which had expired. A status report on this species was compiled in 1980 through Service contract. This status report and information gathered by Service personnel in the summer of 1980 provided new biological and economic data on *Spiranthes parksii*. The Secretary determined that sufficient new information was available to repropose *Spiranthes parksii* (45 FR 41326) on June 18, 1980.

In the June 24, 1977, Federal Register (42 FR 32373-32381), the Service published a final rulemaking under 50 CFR 17 detailing the regulations to protect Endangered and Threatened plant species. The rulemaking established prohibitions and permit procedures to grant exceptions, under certain circumstances, to the prohibitions.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291. Since this rule was proposed before January 1, 1981, a Determination of Effects on Small Entities is not required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507).

Summary of Comments and Recommendations

In the June 18, 1980, Federal Register proposed rule (45 FR 41326) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. A letter was sent to the Governor of Texas notifying him of the proposed rule and soliciting his comments and suggestions. All comments received during the period from June 18, 1980, through October 9, 1980, were considered and these are discussed.

The Governor of Texas had two comments on the proposal: The first concerned the effects of the Navasota ladies'-tresses proposal on the State highway system which was difficult for Texas to determine without knowledge of the actual locations. The U.S. Fish

and Wildlife Service has responded to this concern by providing the Texas State Department of Highways and Public Transportation with a generalized map showing the locations of this species. Based on this information, it was determined that the listing of *Spiranthes parksii* is not likely to have any effect on that Agency.

Governor Clements second concern was the potential conflict between the Navasota ladies'-tresses proposal and the federally-authorized Millican Reservoir Project. While the site as authorized by Congress would have posed no conflict, the U.S. Corps of Engineers has evaluated alternative sites so as to avoid substantial lignite deposits for energy needs in the original project area. Since there was the possibility that populations of this species could lie within the alternate sites, potential conflicts between the project and the species and its habitat were further investigated.

The U.S. Army Corps of Engineers (ACE) biological assessment in 1981 of the proposed sites determined the closest Navasota ladies'-tresses or other Endangered and Threatened species to be over a mile from the proposed project sites. The Army Corps has concluded, and it is expected that, the Millican Project should have no affect on the plant.

A member of the U.S. Department of Agriculture Research Service in College Station commented on the habitat requirements of *Spiranthes parksii*, in response to information presented in the proposal. He believes that this plant is not fire-dependent; rather, the open habitat is maintained by soil type, erosion and grazing without the necessary intervention of fire. He goes on to emphasize the threats to *Spiranthes parksii*.

A member of the Department of Botany at the University of Toronto, submitted comments supporting the intent of the proposal. The commentator questioned the extent of the threat posed by collecting and therefore the failure to propose Critical Habitat for *Spiranthes parksii*. The Service feels that while collecting may not be extensive at this time, it remains a potential threat. Only 9-20 individuals of this taxon have been counted since its rediscovery. Because of its limited number, the species could be desired for its rarity or due to the extensive interest in orchid cultivation.

For this reason, the Service concluded that *Spiranthes parksii* would be better protected if Critical Habitat were not formally designated. Designation of Critical Habitat requires that maps of

the affected area be published in the *Federal Register* and local newspapers. The Service believes that calling attention to this plant in that fashion would make it more vulnerable to extinction. Agencies whose activities may impact the species have been notified of its general locations, thus minimizing the possibility that they will unintentionally destroy the two known sites where *Spiranthes parksii* occurs.

A member of the Department of Biology at Texas A & M University in College Station wrote in support of the proposal of *Spiranthes parksii* to be an Endangered Species.

No public meeting was requested on this listing. No one offered any comments opposing this listing. The Service made efforts to contact the private owners. One owner was reached who supported the listing. No response was received from the second landowner.

Conclusion

After a thorough review and consideration of all available information, the Director has determined that *Spiranthes parksii* Correll (Navasota ladies' tresses) is an Endangered species throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Endangered Species Act. The Director has determined that *Spiranthes parksii* is primarily affected by factors numbers 1, 2, 4, and 5.

All five factors and their application to *Spiranthes parksii* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* *Spiranthes parksii* (Navasota ladies'-tresses) occurs in Brazos County, Texas, as two very small populations on private land comprising 20 plants in total. The larger is in the southeastern part of the county on the outskirts of the College Station-Bryan urban area. Expanding urbanization threatens to destroy this population unless proper planning for the species protection takes place. The second population occurs on a ranch and the only land use is for hunting, however, no protection status exists for the species at this site.

Neither site for this plant currently receives any protection status. Unless proper planning occurs and unless agreements are negotiated to protect the habitat of this rare orchid, the species will remain highly vulnerable to extinction.

Additional potential habitats for this species were searched without success. Thus, two very small populations represent the entire known range of the species.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* *Spiranthes parksii* is a rare endemic that is currently little known to the general public. At present, the taking of specimens for scientific study is minimal. Commercial and private taking by the public is a potential threat to this species of rare orchid.

(3) *Disease or predation.* There is no evidence that either disease or predation is a contributing factor to the endangered status of this species.

(4) *The inadequacy of existing regulatory mechanisms.* There is currently no State or Federal protection for *Spiranthes parksii*.

(5) *Other natural or manmade factors affecting its continued existence.* *Spiranthes parksii* is endemic to small openings in post oak woodland in Brazos County, Texas. The severely restricted distribution of this species to two stations and the extremely low population level intensify any adverse effects (either manmade or natural) occurring in the habitat of this plant. Accidental browsing of the species could occur since no fencing or other actions have been taken to protect the species. Extended periods of drought or changes in land use of these sites could lead to the extirpation of this species. Natural population fluctuations could also lead to the extinction of *Spiranthes parksii*.

Critical Habitat

Section 4(a)(1) of the Endangered Species Act of 1973, as amended, provides, in part:

"* * * At the time any such regulation (any proposal to determine a species to be an Endangered and Threatened species) is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

Critical Habitat has not been proposed for *Spiranthes parksii* because it is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973 with respect to plants. This orchid, one of the rarest in North America, could be sought as a curiosity by collectors were Critical Habitat maps published. Publishing these detailed location maps of the *Spiranthes parksii* populations in the *Federal Register* and local newspapers as is required by the Endangered Species Act would call attention to this species and make it more vulnerable to taking. Therefore it would not be prudent to designate Critical Habitat at this time. After protection plans have been developed for this plant, Critical Habitat may be beneficial and may be proposed in the future.

Effects of This Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, *Federal Register* (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. The regulations which pertain to Endangered plants are found at § 17.61 of 50 CFR and are summarized below.

With respect to *Spiranthes parksii* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR Section 17.61 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. International and interstate commercial trade in *Spiranthes parksii* does not exist and few or no permits would probably be requested. Permits would be available for plants of cultivated origin.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now accrue to *Spiranthes parksii*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Spiranthes parksii*, but also to insure their actions are not likely to result in the destruction or adverse modification of any Critical Habitat which may be determined at some future date by the Director.

The two known populations of *Spiranthes parksii* occur on privately owned lands. The Millican Reservoir project, which was authorized by Congress in 1968, is the only Federal involvement known for the area. The U.S. Army Corps of Engineers' biological assessment of proposed sites showed the closest population of *Spiranthes parksii* to be over a mile from the project area. No Section 7 conflicts are expected.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this rule. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884). The primary author of this rule is Ms. Rosemary Carey, Region 2, Office of Endangered Species, Albuquerque, New Mexico 87103 (703/766-3972).

Literature Cited

Catling, P. M. and K. L. McIntosh.

1979. Rediscovery of *Spiranthes parksii* Correll. Sida 8(2): 188-193.

Mahler, Wm. F. 1980. Determination of *Spiranthes parksii* Correll as an Endangered Species. Prepared for the U.S. Fish and Wildlife Service.

Texas Almanac, 1980-81. 50th ed. Published by Dallas Morning News, Dallas, Texas.

List of Subjects in 50 CFR Part 17

Fish, Marine mammals, Endangered and threatened wildlife, Plants (agriculture).

Regulation Promulgation**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

Accordingly Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended, as set forth below.

1. Amend § 17.12 by adding, in alphabetical order the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Orchidaceae— <i>Spiranthes parksii</i> .	Orchid family— Navasota ladies'- tresses.	USA (Texas)...	E	NA.....	NA.

Dated: April 9, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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